IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1880 of 2001
WITH
SPECIAL CIVIL APPLICATION No 1878 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAGDISHCHANDRA R SONI

Versus

COMMISSIONER OF HIGHER EDUCATION

Appearance:

1. In both Special Civil Applications -
MR RA PATEL for Petitioner No. 1
MR MA PATEL, AGP for Respondent No. 1
MR AJAY R MEHTA for Respondent No. 2
RULE SERVED BY DS for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 27/04/2004

ORAL COMMON JUDGEMENT

1. Both these petitions contain identical facts and the relief prayed therein are also identical and, therefore, they have been heard together and now they are being disposed of by this common judgment.

2. So far Special Civil Application No. 1878 of 2001 is concerned, the petitioner was appointed as Tutor in Economics in Petlad Arts College; whereas the petitioner of Special Civil Application No. 1880 of 2001 was appointed as Lecturer in Economics in the same college. It appears that service of both the petitioners was terminated after they were transferred to Navjivan Arts and Commerce College at Dahod in the year 1975. Their services were terminated on 14th June, 1976 on the ground that they were temporary and their services were not more required.

2.1. Against the said termination, both the petitioners approached Education Tribunal which did not grant the reinstatement but directed the management to pay back wages to the petitioners. Against the decision of the Tribunal, the petitioners as well as the management preferred petitions before this Court. So far the petitioner of Special Civil Application No. 1880 of 2001 is concerned, he was ordered to be reinstated together with back wages. But so far the petitioner of Special Civil Application No. 1878 of 2001 is concerned, no reinstatement was granted in her favour, but the management was directed to pay the back wages alone. In view thereof, the management had then preferred petition being Special Civil Application No. 3852 of 1982 and the order of Tribunal was stayed by this Court. Subsequently this petitioner also preferred Special Civil Application No. 6472 of 1988 challenging the order denying reinstatement. Both these petitions were clubbed together. It appears that during the course of hearing a compromise was arrived at between the present petitioner and the management and, therefore, the management agreed to reinstatement. Thus, the Tribunal's order was set aside. The petitioner was ordered to be reinstated on her original post. By virtue of said order, both the petitioners were reinstated on 5th April, 1989.

2.2 It further appears that upon the reinstatement, the question regarding fixation of appropriate pay-scale arose, which was not being decided by the respondents on the ground that the forms regarding pension option, etc. were not filled in and option was

not exercised by the petitioners within stipulated time. The Government vide resolution dated 15th October, 1984 had extended the benefits of the pension scheme to the teachers who were serving in Non-Government Grantable University Affiliation Arts, Science, Commerce and B. Ed. Colleges. By the said resolution the teachers working in the aforesaid colleges were given one year to exercise their option if they desired to have option scheme. That option was required to be exercised on or before 14th October, 1985. The petitioners, as could be seen above, came to be reinstated on their original posts with effect from 5th April, 1989 i.e. much after the expiry of the period available under the aforesaid resolution. However, subsequently another resolution dated 17th September, 1991 was issued to grant one more opportunity to the teachers to exercise the option of pension scheme and the time limit was fixed as 16th November, 1991. The petitioners had, however, exercised their option and submitted revised option in time to the college, which in turn forwarded the option forms alongwith other relevant papers for sanction to respondent no. 1 by letter dated 9th December, 1989. Thus, the option was exercised by the petitioners immediately upon their reinstatement in service.

2.3. Earlier the dispute with regard to pay fixation on account of not filing the forms in time had arisen between the petitioner of Special Civil Application No. 1878 of 2001 and the Director of Education and others, for which ultimately the petitioner was constrained to file a petition before this Court being Special Civil Application No. 2851 of 1992. This Court [Coram : R.A. Mehta, J. as he then was] decided the same in favour of the petitioner. In that petition the Court held as under :-

> "12. When she was reinstated on 5/4/1989, on that very day, without any loss of time she has exercised her option. In such cases, where it was physically, legally and in every manner impossible to exercise any option or impossible to have any option, such person is required to be given a reasonable opportunity to exercise option within a reasonable time. The GR had given time of three months to exercise the option to every incumbent teacher. The petitioner was not in service during the relevant period and therefore, she was not in service during the relevant period and therefore, she was not an incumbent. But as soon as she was reinstated and she became incumbent of the post, on that very day she had

exercised her option without loss of a single day. Therefore, she cannot be attributed any deeming fiction or she cannot be deemed to have elected revised pay scale with effect from 1/1/1986. Therefore, the stand of the authorities that she could not have exercised any option on her reinstatement and that she is deemed to be governed by the revised pay scale from 1/1/1986 is highly untenable and contrary to the spirit of para. 27 of the GR. Therefore, the pay scale fixation done on that basis at Rs.2,500/= as on 5/4/1989 is required to be modified to Rs.2,575/= with the date of next increment as 8/7/1989."

In view of this observation, it is very clear that the option exercised by the petitioners was considered to be well within time and the respondents were required to take decision on the basis that the options were validly exercised under the scheme.

2.4. In the present petitions, the same issue has again arisen in view of the stand taken by the respondents that option has not been exercised for the pension scheme within stipulated time and, therefore, the same cannot be considered. However, in view of the aforesaid judgment of this Court and considering the facts of the petitions, the rival contentions of the learned advocates, namely Mr. R.A. Patel for the petitioners and Mr. A.R. Mehta for the management and Mr. M.A. Patel, Ld. AGP for the Commissioner of Education, it clearly appears that the option is exercised validly. It may be noted here that in these petitions the petitioners have prayed for voluntary retirement also with effect from 15th June, 2001. In light of that, following directions are required to be given :-

I. The respondent no. 1 is directed to approve the option forms regarding the pension scheme filed by the petitioners on 5th April, 1989 for the purpose of pension and all other consequential benefits on or before 31st July, 2004.

II. That the respondent no. 1 will take into consideration the prayer of petitioners for voluntary retirement and take appropriate decision thereon in accordance with law.

With the above directions, the petitions are partly allowed. Rule made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.